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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,045	02/21/2007	Kouji Matsushima	14875-157US1 C1-A0308P-US	9112
26161	7590	03/18/2010		
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER	
			SKELDING, ZACHARY S	
			ART UNIT	PAPER NUMBER
			1644	
			NOTIFICATION DATE	DELIVERY MODE
			03/18/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary

Application No.

10/574,045

Applicant(s)

MATSUSHIMA ET AL.

Examiner

ZACHARY SKELDING

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2, 6, 8-10, 14 and 21-48 is/are pending in the application.
- 4a) Of the above claim(s) 6, 8-10 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 2 and 21-48 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's election with traverse of Group II, drawn to NK inhibitor receptors polypeptides and the species of II, 1 in the reply filed January 7, 2010 is acknowledged.

The traversal is on the ground(s) that "there would be no undue burden to examine together the identified species II, 1 ("The protein encoded by the DNA of claim 1, part (b)/claim 1 part (d)/claim 2") and II,2 ("The protein encoded by the DNA of claim 1, part (a)/claim 1, part (c)"). Species II, 1 includes three parts, two of which are defined by nucleic acid sequence (claim 1, parts (b) and (d): SEQ ID NOs: 1, 3, and 5) and one of which is defined by amino acid sequence (claim 2: SEQ ID NOs: 2, 4, and 6). Thus, searching the elected species II,1 will require a search of all of SEQ ID NOs: 1, 2, 3, 4, 5, and 6. Since a search of SEQ ID NOs: 2, 4, and 6 will have been done with respect to the elected species II, 1, no further search will be needed for species II,2. Further, the polypeptide sequences of SEQ ID NOs: 2, 4, and 6 are encoded by the nucleic acid sequences of SEQ ID NOs: 1, 3, and 5, respectively. Applicants submit that there is therefore no undue burden to search both species II, 1 and II,2 together."

As to the restriction requirement, because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Thus, the restriction requirement is still deemed proper and is therefore made FINAL.

As to the election of species requirement, this has been withdrawn in view of applicant's argument and upon further consideration.

2. Claims 2 and 6, 8-10, 14 and 21-48 are pending.

Claims 6, 8-10 and 14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on January 7, 2010.

However, upon further consideration a supplemental election of species requirement is put forth below.

Supplemental Election of Species Requirement

3. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

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SEQ ID NO: 2

OR

SEQ ID NO: 4

OR

SEQ ID NO: 6

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:

claims 32-37, 40-42 and 45-47 recite individual species while the remaining claims are generic.

4. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons:

The proteins that comprise an amino acid sequence represented by either SEQ ID NO: 2 or SEQ ID NO: 4 set forth in claim 1 and the proteins that comprise the amino acid sequence represented by SEQ ID NO: 6 set forth in claim 1 do not have a novel chemical structure in common, and are only linked by the fact that said proteins are NK cell receptor proteins. However, NK cell receptor proteins were well known prior to the priority date of the present application.

and thus the feature of being a NK cell receptor protein cannot be said to be a special technical feature as defined in PCT Rule 13.2.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ZACHARY SKELDING whose telephone number is (571)272-9033. The examiner can normally be reached on Monday - Friday 8:00 a.m. - 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla can be reached on 571-272-0735. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Zachary Skelding/
Examiner, Art Unit 1644